

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

CITIBANK, N.A, AS TRUSTEE,)
)
Plaintiff,)
)
v.)
)
JOHN P. PHELAN, WENDY M. PHELAN,)
THE UNITED STATES OF AMERICA,)
O'CALLIGHAN CONSTRUCTION)
COMPANY, AND THE)
COMMONWEALTH OF)
MASSACHUSETTS' DEPARTMENT OF)
REVENUE,)
)
Defendants, and)
)
DAVID LA BRIE,)
)
Defendant and Cross-claimant)

Civil Action No. 4:05-CV-40045-FDS

**DECLARATION OF WILLIAM M. PALMER, ESQ. OF FAILURES OF
CROSS-CLAIM DEFENDANTS JOHN D. PHELAN, WENDY M. PHELAN,
O'CALLAHAN CONSTRUCTION COMPANY AND THE COMMONWEALTH OF
MASSACHUSETTS' DEPARTMENT OF REVENUE TO PLEAD OR OTHERWISE
DEFEND AGAINST THE CROSS-CLAIMS OF DAVID LA BRIE
AND
REQUEST FOR ENTRY OF DEFAULTS BY THE CLERK**

I, William M. Palmer, Esq., counsel for David La Brie, declare under the penalties of perjury of the laws of the United States, as follows: Defendant and cross-claimant David La Brie served and filed his Answer and Cross-Claims on all of the above-named cross-defendants in

February of this year (as further specified in his paper entered as docket no. 12). None of the specified defendants (those being all of the cross-defendants excluding the United States of America, which was served in May) has pled or otherwise defended against the cross-claims either as provided for by the Massachusetts Rules of Civil Procedure while this matter was before the Superior Court of Massachusetts, or as provided for by the Federal Rules of Civil Procedure while this matter has been under the jurisdiction of this Court. Therefore, under Fed.R.Civ.P. 55(a), having made the specified defendants' failure to plead or otherwise defend appear by this declaration, defendant and cross-claimant David La Brie respectfully requests that the Clerk enter the defaults of cross-defendants John D. Phelan, Wendy M. Phelan, O'Callaghan Construction Company and the Commonwealth of Massachusetts' Department of Revenue with respect to his cross-claims.

Date: June 9, 2005

Respectfully submitted,

/s/ William M. Palmer

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ATTORNEY FOR DEFENDANT AND
 CROSS-CLAIMANT DAVID LA BRIE

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this document was served by first-class mail on this 9th day of June on David M. Rosen, Esq.; Harmon Law Offices, P.C.; 150 California Street; Newton, MA; 02458, and on John J. Curley, Esq.; McEvilly & Curley; 48 West Street; Leominster, MA; 01453, and that a signed declaration was mailed to be filed by the Clerk.

/s/ William M. Palmer

June 9, 2005

WILLIAM M. PALMER

DATED